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## CURRENT TOPICS

### New Rules and Orders

THE County Court Fees (Amendment) Order, 1951 (S.I. 1951 No. 1403 (L. 8)), which came into operation on 3rd August, reduces the fee payable on entering an appeal to a county court from £2 to 30s., and makes the fee on the delivery of a counter-claim, hitherto paid only by a defendant or respondent, payable by any party delivering a counter-claim. The order also prescribes fees in proceedings under the Maintenance Orders Act, 1950, and the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951. The Reserve and Auxiliary Forces (Protection of Civil Interests) Rules, 1951 (S.I. 1951 No. 1401), came into operation on 15th August. They prescribe the procedure on an application to the High Court, county court or court of summary jurisdiction under the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951, for leave to enforce a judgment or remedy against a service man performing service to which the Act applies, or by a person claiming protection on the ground that he has been financially affected by the service man's call-up. There is an appendix of forms. The Reserve and Auxiliary Forces (Protection of Civil Interests) (Business Premises) Regulations, 1951 (S.I. 1951 No. 1402), which came into operation on 2nd August, prescribe the form of notice which may be served on a tenant requiring him to elect whether or not to apply for a new tenancy of business premises under the Act. Other regulations made under the Act are the Reserve and Auxiliary Forces (Protection of Industrial Assurance &c. Policies) Regulations, 1951 (S.I. 1951 No. 1407), and the Reserve and Auxiliary Forces (Protection of Friendly Society Life Policies) Regulations, 1951 (S.I. 1951 No. 1408), both of which came into operation on 4th August.

### Justices of the Peace Act, 1949 (Commencement No. 2) Order, 1951

THE Justices of the Peace Act, 1949 (Commencement No. 2) Order, 1951 (S.I. 1951 No. 1182 (C.3)), brings s. 10 and other related sections of the Act into force on 1st October, 1951. The changes in commissions of the peace and courts of quarter sessions consequent on this are noted at p. 534, *post*. Home Office Circular No. 154/51, issued to clerks of county councils and standing joint committees, explains that a borough losing its commission will by para. 6 (1) of Sched. II to the Act become a petty sessional division of the county, and the clerk to the borough justices will, under para. 8 (2), continue as clerk to the justices for that division. Paragraph 8 (4) deals with his remuneration. Paragraph 14 deals with the provision of accommodation and other things required for the due transaction of the business and convenient keeping of the records of the justices of the petty sessional division comprising the borough during the interim period until the financial provisions of the Act (including s. 25) come into force (on 1st April, 1953) and for a year thereafter. Paragraph 4 of Sched. III to the order provides, among other things, that orders made by the borough justices shall be deemed, after 1st October, to have been made by those justices acting as county justices for the petty sessional

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division comprised of the borough. One consequence of this is that a fee which is due to the clerk to the justices before 1st October but not paid until after, and any part of an unappropriated fine which is imposed before 1st October but not paid until after, should be disposed of as a fee due to a clerk to county justices or a fine imposed by county justices, and consequently should be paid to the county treasurer. Under paras. 9 and 10 of Sched. II to the Act the coroner of a borough losing a court of quarter sessions will become a coroner for the county and the borough will become a coroner's district of the county. Paragraph 9 (2) deals with his remuneration. Paragraph 15 deals with the provision of accommodation for the coroner for the period of one year from 1st October. Compensation regulations are to be made under s. 42 of the Act.

### Models in Factories Act Cases

LORD JUSTICE SINGLETON recently stated in the Court of Appeal that the court would be assisted by the exhibition of models in cases arising out of factory accidents, instead of photographs. Courts are well aware of the danger that a photograph may convey, notwithstanding the best intentions of the photographer, an erroneous impression. It is clear that models minimise the margin of error. Models for factory cases must be accurate in every detail whether they be static or moving. A recent example where true-to-scale models, accurate down to the last detail, were required, is at the Science Museum, Kensington, where nearly a hundred models of agricultural machinery manufactured by well-known firms have been constructed for the Agricultural Machinery Collections. The learned lord justice added that it was always difficult where injuries from machinery were involved to visualise the dimensions of the machine and to reconstruct the accident with accuracy. The use of models would simplify matters for both the litigants in explaining their cases and the judges in understanding them.

### Magistrates' Courts Committees

THE Magistrates' Association issued a statement on 6th August announcing that they have appointed a standing committee to advise and guide the new magistrates' courts committees to be brought into being by next April under the Justices of the Peace Act. During the first year of their existence their chief object for consideration will be the salaries of justices' clerks. They will also consider the redivision of counties into petty sessional divisions. "The committees are also obliged," the statement adds, "to provide courses of instruction for justices as well as to undertake many matters of an administrative nature, such as the provision of books, furniture, and other needs of court houses, together with a general consideration of the salaries to be paid to deputy clerks and other officials of the court." It has been decided to seek an early opportunity of discussing the position with the Home Secretary.

### Australian Law Convention

AMONG distinguished visitors from the Commonwealth at the Australian Law Convention, opened on 8th August at Sydney, were the LORD CHANCELLOR and the MASTER OF THE ROLLS. They were welcomed by Mr. C. E. MARTIN, K.C., Attorney-General of New South Wales, as representatives of "the link between Australian and British jurisprudence." The conference was attended by more than 2,000 lawyers, including many judges, and was organised by the Law Council of Australia, whose president is Mr. H. G. ALDERMAN, K.C. It is pleasing and at the same time profoundly impressive to those who believe in the Commonwealth ideals based on the English common law that at the ceremonial processions inaugurating the convention the Lord Chancellor was preceded by a bearer carrying the Lord Chancellor's purse and followed by a train-bearer, as he is in ceremonial processions in this country. We extend to our Australian brethren in the profession our hearty felicitations on this historic occasion.

***Procedure***

## III—STATUTE BARRED AND UNBARRED

IN *Re Kerly, Son & Verden* [1901] 1 Ch. 467, to which the previous article in this series was devoted, the writ was issued and brought to the defendants' attention before the abortive negotiations for settlement developed. Sometimes, and particularly in running down cases when an insurance company is known to be behind the scenes at the defendant's end, the writ is issued and "put into a drawer"—i.e., its existence is not disclosed to the other side. It is thus possible, without disturbing the temperate atmosphere in which negotiations for compromise can best proceed, to escape the perils of the limitation statutes, among which, it is never out of place to remind practitioners, s. 1 (3) of the Law Reform (Miscellaneous Provisions) Act, 1934, must be accorded an importance too rarely appreciated.

Now the limitation Acts, generally speaking, lay down periods within which an action is to be *commenced*. Undoubtedly an action is commenced when a writ is issued, even though no attempt is made at the time to serve it. So long as the writ continues in force the negotiations can safely occupy the scene unhampered by any mention of proceedings. Since a writ of summons continues in force for a year this may have the effect of adding up to a year to a statutory limitation period. The plaintiff's solicitor should not, however, rely on being able to renew the writ once the limitation period has expired. He has to adduce, as a reason for renewal, evidence of reasonable efforts at service or some other good reason (Ord. 8, r. 1), and the observations of the Court of Appeal at the end of their judgment in *Battersby* v. *Anglo-American Oil Co., Ltd.* [1945] K.B. 23 indicate quite clearly that there would be considerable difficulty in renewing a writ after the time when, if it were not for the unserved writ, a limitation period would have run its course. Those observations refer to an application for renewal made while the writ is still current; when once both writ and statutory period have expired, as the decision in the same case shows, there is now no hope at all of a renewal being granted.

An amendment of pleadings is generally on the same footing. The court will not allow it if to do so would affect the operation of the statute (*Marshall* v. *L.P.T.B.* [1936] 3 All E.R. 83).

In the cases just mentioned the plaintiff is driven to seek the aid of the court in order to retrieve himself from the position of being statute barred in his claim. That aid the court will not give, because it would involve denying to the defendant a defence which has already accrued to him. The circumstances in *Hill* v. *Luton Corporation* [1951] 1 All E.R. 1028; 95 SOL. J. 301, gave rise to a problem similar in its general background and relevance, but slightly—and, as Devlin, J., held, materially—different in important respects. The judge considered that the case was important enough

to be adjourned into court, so that his judgment on appeal from the master might be made available for the guidance of the profession. The lesson to be learned seems to be that if the plaintiff can recover his position without the court's aid, by taking some step which is open to him without leave, then there is nothing of which the defendant can *thereafter* complain.

The position was brought about in this way. A few months after being injured in an accident, the plaintiff issued a writ against the defendants, a public authority entitled to the benefit of s. 21 of the Limitation Act, 1939. The writ was not served at once; the plaintiff's solicitors served it on a date which happened to fall just after the year from the accrual of the cause of action which is the period allowed by s. 21, and at the same time they delivered a statement of claim. Now for the two crucial features of the case. As both sides were constrained by authority to agree, (*a*) the endorsement of the writ was defective for insufficient particularity (in the manner indicated in an earlier article: p. 492, *ante*), and (*b*) the statement of claim was in terms sufficiently precise to cure the defect in the endorsement of the writ. Devlin, J., epitomised the situation by saying that the writ which was issued within the proper time was defective, while the document curing the defect was not delivered within the time limit.

Since the event which stops a limitation period from running is the commencement of an action, the first question which the learned judge considered was: What effect did the defect in the endorsement have on the writ as an instrument for commencing an action? His lordship came to the conclusion that the defect did not make the writ a nullity. If it were a nullity, how could a properly drafted statement of claim cure the defect?

Devlin, J., then turned to the defendants' main point that the position had to be regarded as at the date when the limitation period expired. If on that date there is current a writ with a good endorsement or one which has before that date been cured by a proper statement of claim, then counsel for the defendants conceded that the Limitation Act is satisfied. But in the present case, he said, there was only at the relevant time an unamended defective writ. The learned judge saw in this merely the "nullity" argument in another form. If the writ were not a nullity it was effective to commence an action and so stop the statutes from running.

Finally, Devlin, J., considered the question whether the writ ought to be set aside on the ground of the initial irregularity. The judge gravely doubted whether he had power to take any such step, and if he had he would not exercise it to set aside the writ in the present case. Distinguishing the *Marshall* and *Battersby* cases (*supra*), his lordship pointed out first that the principle which permits the plaintiff to cure defects in an endorsement by delivery of a proper statement of claim operates as a right of amendment without leave. The plaintiff therefore needs no assistance, in this situation, from the court.

"Secondly," Devlin, J., proceeds, "the Limitation Act, 1939, s. 21, enables a defendant to know with finality at the end of the period or on service of a writ issued within the period, whichever be the later, what cause of action he has to meet. That would be defeated and the Act emasculated if thereafter new causes of action could be freely introduced. The defendant cannot expect, however, to know his position before the writ is served, and it cannot make the slightest difference to him whether he learns of it then from one document or from two."

Much may depend, in connection with such discretionary matters as the setting aside of proceedings, upon the exact turn or sequence of events. The learned judge concluded his judgment with a caution that nothing that he had said as to the exercise of the power to set aside should be construed as applying one way or the other to a case where the application to set aside is made before delivery of the statement of claim. He had not considered the course which should be followed in that situation. With due diffidence we may perhaps think aloud on this point. Earlier in his judgment, Devlin, J., had cited cases in which the court had refused to set aside a writ on account of an irregular endorsement, the Court of Appeal in *Auster* (1914), *Ltd.* v. *London Motor Coach Works* (1914), 112 L.T. 99, having thought that only the endorsement should be struck out. Can a writ with no extant endorsement at all be cured by delivery of statement of claim? Presumably so, since why else should the court in the *Austen* case have hesitated to set aside the writ? On this footing a defendant cannot expect finally to know his position until the statement of claim is delivered, even though that document does not make its appearance until after service of the writ.

J. F. J.

***A Conveyancer's Diary***

# REPORT OF COMMITTEE ON INTESTATE SUCCESSION—II

PERHAPS the most interesting of all the proposals made by the committee is that relating to what the report refers to as the matrimonial home. It is recommended that if at the date of the intestate's death his or her surviving spouse was living in a freehold house owned by the intestate, or in a house held by the intestate under a tenancy with two years or more unexpired at the date of the death, the spouse should have the option to purchase that house or the intestate's interest therein from the estate at a price to be ascertained in accordance with certain rules, such option to be exercised before the expiration of twelve months from the date of the grant of representation in respect of the intestate's estate. The expression "matrimonial home" is used in the report in reference to any house which falls within the scope of this option to purchase, and it is pointed out that in most cases such a house will in fact be the matrimonial home; but it is recommended that the option should extend to any house of the requisite kind in which the surviving spouse was living at the date of the death, whether or not the intestate was also living there.

Before reaching agreement on this recommendation, the committee considered various suggestions which were put to them with a view to a solution of the undoubted difficulties in which a surviving spouse (particularly a widow) finds himself or herself in the present conditions of the estate market when it comes to making an offer for the matrimonial home. The suggestions put to the committee fell into three groups: (*a*) merely to increase the size of the statutory legacy to the surviving spouse; (*b*) to give the matrimonial home to the spouse; and (*c*) to give the spouse an option to purchase

the matrimonial home. The second of these suggestions, to give the matrimonial home to the surviving spouse, the committee reject out of hand as creating an unfair distinction between those cases where the intestate owned a house and those where he rented one. As regards the first suggestion, the committee in any case recommend that the statutory legacy should be increased to a minimum of £5,000, and at this figure it should be possible, in most cases, to set off the value of the house against the legacy or some part thereof; but it is felt that it would be unjust merely to increase the amount of the statutory legacy and to give the spouse no rights of any kind in regard to the matrimonial home. An option to purchase is, therefore, the recommended solution.

This recommendation, if it is accepted by Parliament, will be welcome in all cases where it is applicable, but particularly so wherever the value of the matrimonial home exceeds the amount of the statutory legacy. The surviving spouse, having exercised the option, should have no difficulty in raising the balance of the purchase price over the amount of the statutory legacy by mortgage in any case where the estate is large enough to warrant the retention of the house at all, and the trustees of the estate may in certain cases be willing to advance such balance on mortgage as an investment of part of the trust funds. Alternatively, if the recommendations of the committee with regard to the capitalisation of a spouse's life interest are also accepted, the balance may be raised in this way.

The price at which the matrimonial home should be sold to the surviving spouse under his or her option, it is recommended, should be the full market price at the date of the death. The suggestion that the lower value which is accepted for estate duty purposes under the so-called Chancellor's concession should be the purchase price for the purpose of the surviving spouse's option is rejected for two reasons: it would be unfair to the children, who would normally be the persons adversely affected by such a basis for valuation, and the concession, being a temporary concession, would not be a convenient standard to incorporate in provisions which, if this recommendation is accepted, will become permanent. A third reason may perhaps be added: it is very doubtful whether this concession, or any other similar concession, is strictly legal.

If the full market value of the house is accepted as the proper value for this purpose, it is then recommended that, in all cases to which the Chancellor's concession does not apply, the value agreed for the purposes of estate duty with the Commissioners for Inland Revenue should be treated as the purchase price payable on the exercise of the statutory option (as it would then become). In cases to which the concession applies, the market value at the date of the death must still be ascertained for the purpose of assessing probate fees, and in such cases it is recommended that the value so ascertained should be treated as the purchase price. In this way the expense of a separate valuation for the purposes of the option would be avoided.

It is to be hoped that all the committee's recommendations with regard to the rights of a surviving spouse in the residuary estate of an intestate will be accepted and passed into law. The position under the present law is completely out of date. I have written in this "Diary" of the difficulties which arise when the intestate dies leaving a widow and infant children and the principal asset of his estate is the matrimonial home, and every practitioner knows of cases where, in similar circumstances, the only common-sense solution of the practical difficulties of the intestate's family has lain in a more or less flagrant breach of trust. The sooner this absurd state of affairs is remedied the better.

The last of the committee's recommendations concerns the Inheritance (Family Provision) Act, 1938. It has always been a matter of doubt whether this Act applies to cases of partial intestacy, and the committee recommend that Parliament should take the opportunity afforded by any measure designed to amend the law of devolution upon intestacy to clear up the ambiguity on this point and declare that the Act should apply to partial intestacies. If this suggestion is accepted, it is further recommended that "both for the purpose of considering the maximum provision the court may make under the Act and also for the purpose of making provision out of the testator's estate, the court should be entitled to regard the estate as a whole, and not be arbitrarily limited to that part thereof as he may have chanced to dispose of by will. The needs of a dependant under the Act remain just the same whether the testator's estate devolves under his will or under his intestacy, or partly under both."

Further, it is recommended that the Act of 1938 should be made to apply to cases of total intestacy. The reasons for this recommendation appear to be cogent: "There is, of course, a case to be made for certainty in the devolution of the estate of a deceased person, and for the exclusion of any discretionary power to interfere therewith. Once, however, this principle has been abandoned and the necessary machinery set up for the courts to remedy cases of injustice, we do not think that it is logically defensible or indeed practically convenient to confine this intervention to cases where the deceased left a will. The court is not, of course, bound to intervene unless it thinks fit, and it may well be that there will be few cases of injustice arising where there is a total intestacy. But where such cases do arise, we consider that the jurisdiction of the court to remedy injustice should not be excluded." Elsewhere in the report, the argument that it would be invidious to ask the court to declare that provisions which have been made by Parliament in a statute are unreasonable is refuted as being based on a confusion between what is reasonable as a general provision to meet the average case, and what is reasonable in exceptional circumstances. "It might be reasonable for Parliament to provide as a matter of general law that a surviving spouse should take the first £5,000 of the estate of an intestate. But it would not be reasonable that a woman dying possessed of an estate of £5,000 and leaving two infant children by her first marriage wholly without means, and a wealthy husband by a second marriage, should leave all her estate to her husband. If in such a case she died intestate we venture to think that there would be no embarrassment in a court declaring that the deceased had failed to make reasonable provision for her infant children and rectifying the matter accordingly."

Two final points from the report: First, apart from the recommendations summarised last week and the proposal to confer an option to purchase the matrimonial home on a surviving spouse, no other alteration in the existing law of intestacy is proposed. That is to say, all the committee's recommendations are made with reference to the case where the intestate leaves a widow or widower: where no surviving spouse is left, no alteration in the existing law is proposed. Second, it is not recommended that any provision should be made by law for a so-called "unmarried wife" of an intestate, or for illegitimate children: the latter, in the committee's view, are now adequately protected by the Adoption Act, 1950, wherever advantage is taken of that Act by the parents in adopting their illegitimate children.

"A B C"

***Landlord and Tenant Notebook***

# CONTROLLED PREMISES SUB-LET FURNISHED

ANOTHER fine distinction affecting controlled properties has been drawn in *Jackson (Francis) Developments, Ltd.* v. *Hall* [1951] 2 T.L.R. 97; 95 SOL. J. 466 (C.A.); this time between premises let together with the use of furniture before, and such premises so let after, the operation of a notice to quit has been suspended by virtue of the Landlord and Tenant (Rent Control) Act, 1949, s. 11 (2) (*a*). The distinction in question affected the right of the landlord's landlord to recover possession.

The facts, so far as relevant to the question, were that the plaintiffs owned a house which they had let to the first defendant on a periodic tenancy, and on 28th November, 1950, they gave her notice to quit expiring on 11th December of that year. At that time she had sub-let the whole of the house furnished to a couple who were expecting a child; originally part of the house had been sub-let to them (the Landlord and Tenant (Rent Control) Act, 1949, s. 9, would protect the tenant as regards that part), and the sub-letting of the rest was meant to be temporary, there being no question but that the defendant possessed the *animus revertendi*. On receiving the notice to quit she, no doubt in order to safeguard her position, served the sub-tenant with a notice to quit to expire on 9th December. The next move came from the sub-tenant, who referred his contract to the local rent tribunal under s. 1 of the Furnished Houses (Rent Control) Act, 1946, and, the reference having been made during the currency of a notice to quit, correctly made an application under s. 11 of the Landlord and Tenant (Rent Control) Act, 1949, for extension of the period of the notice to quit served upon him.

The landlord sued for possession. It looks as if the defendant, when she gave notice to the sub-tenant, had been guided by the decision in *Prout* v. *Hunter* [1924] 2 K.B. 736 (C.A.), which first showed that a tenant lost protection by sub-letting furnished because "let" in proviso (i) to the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (2)—the Act not to apply to a dwelling-house bona fide *let* at a rent which includes payments in respect of the use of furniture—meant let to the occupying tenant. If this state of affairs no longer obtained when the landlord's common-law right to possession came into being (see *Benninga (Mitcham), Ltd.* v. *Bijstra* [1946] K.B. 58 (C.A.)), the situation would be saved.

For some unknown reason these considerations were not placed before the county court judge at the hearing, the plaintiffs relying on the unauthorised sub-letting of the whole house, and what he did was to refuse an order for possession on the ground that he did not consider it reasonable to make such an order. This, of course, is what is authorised by the Rent, etc., Restrictions (Amendment) Act, 1933, s. 3 (1), when possession is sought of any dwelling-house to which the principal Acts apply; and it was only afterwards that the learned judge appended a note to his judgment saying that he thought that he had, in view of *Prout* v. *Hunter*, come to a wrong decision. In the light of that authority he appears to have considered that the dwelling-house was outside the Acts so that reasonableness would be irrelevant. So, when the matter came before the Court of Appeal, the defendant had to think of something else; and did so. It was there held that the lawful occupation which resulted from an application under the Landlord and Tenant (Rent Control) Act, 1949, did not constitute such a furnished sub-letting as would bring the doctrine of *Prout* v. *Hunter* into operation.

The section starts by giving a "lessee" of furnished premises a right, when a contract has been referred under the 1946 Act, to apply for an extension of a notice to quit which has been served but has not expired. The second subsection provides three things: the notice to quit is not to have effect till the application has been determined; the tribunal may suspend it for up to three months; if they refuse the application it remains suspended for seven days after the refusal. In the recent case, the tribunal ultimately suspended the notice till 11th May, 1951; but when the plaintiffs' notice to quit expired, i.e., on 11th December, the mere fact that the application had been made would protect the sub-tenant against the defendant. Rights so acquired did not, the court held, correspond to those of a sub-tenant not holding *in invitum*; *Prout* v. *Hunter* did not apply so as to affect the status of the mesne tenant with an intention to return.

There is very little in the judgments in *Prout* v. *Hunter* itself to suggest that such a distinction might be drawn; but that is hardly to be expected, the Furnished Houses (Rent Control) Act, 1946, not having been dreamed of in 1924. In his judgment, Sargant, J., did characterise the defendant in that case as one who had taken the flat for the express purpose of sub-letting it furnished at a profit, and one might contrast her conduct with that of the defendant in *Jackson (Francis) Developments, Ltd.* v. *Hall*, who had provided additional accomodation in view of an addition to her tenant's family. But what mattered was that the defendant had the required "*Skinner* v. *Geary* [1931] 2 K.B. 546 (C.A.)" *animus revertendi*; and while the judgment does not make the point too clear, I think that, if she had decided to give up the house, the plaintiffs would have been entitled to possession when their notice expired on 11th December, as there is nothing in either the Furnished Houses (Rent Control) Act, 1946, or in the Landlord and Tenant (Rent Control) Act, 1949, s. 11, to cut down the rights or remedies of third parties. The interests of sub-tenants are provided for in the case of unfurnished tenancies by s. 15 (3) of the Increase of Rent, etc., Restrictions Act, 1920; when the mesne term ends, the sub-tenant simply becomes the immediate tenant of the head landlord; and the Leasehold Property (Temporary Provisions) Act, 1951, produces the same effect, in the case of dwellings, by s. 7, the mesne tenant transferring the baby to his landlord; in the case of shops, a reversionary tenancy may be ordered (s. 13). But when dealing with furnished tenancies and giving the tenants concerned "security of tenure" the Legislature has been content to suspend the operation of notices to quit (tenants holding for fixed terms are not given any security of tenure); the position, as described by Streatfeild, J., in *Alexander* v. *Springate* [1951] 1 All E.R. 351; 95 SOL. J. 156, being that there is a statutory extension of the notice to quit, its effect being postponed.

True, in connection with another matter—the variation of standard rents under s. 1 of the 1949 Act—the fact that a dwelling-house might be sub-let occurred to the Minister of Health well after the statute had come into force, and on 2nd November, 1950, he issued the Landlord and Tenant (Rent Control) (Amendment) Regulations, 1950, substituting three new regulations for three contained in the Landlord and Tenant (Rent Control) Regulations, 1949, the amendments being designed to give superior landlords (and other persons known to have interests) a right to be heard. But these provisions have nothing to do with the security of tenure of sub-tenants of furnished dwellings.

R. B.

# HERE AND THERE

## SIXTH SENSE

WHAT our simple-minded ancestors would have called ghosts or visions and we, in our non-committal way, terrified of blaspheming the national religion of Science, prefer to call "sixth sense" experiences, seem to play a bigger part in current everyday life than most of us are led to believe. I have never seen a ghost myself, but then neither have I ever seen anyone run over by a motor car. Thus, so far as I am concerned, road accidents and spirit phenomena alike reduce themselves to a matter of evidence, and it was with a lively interest that I followed the evidence provided by the *Star*, when for eight solid weeks, from June to August, it published page after page of "sixth sense" stories from its readers, all inspired by an article in which someone had propounded a theory purporting to explain and pin down scientifically all this ghost business. As I have no theory of my own to push, I just pick out from the enormous mass of narrations three that happen to have a legal interest. A lady working in a solicitor's office found that for no apparent reason she had addressed a letter to a Mr. Brown, "A. Brown, deceased." Everyone laughed heartily until a couple of days later it was learnt that he had died on that day. Another story: Four years ago an old gentleman died apparently intestate, and in the administration of his estate an application was made to the court. The night before the matter was to come on his grand-daughter dreamt that he stood beside her bed holding an old Bible open at chapter 2 of St. Luke, with a will as a book-mark. Next morning in a Bible in his bedroom she found his will at that very page. A third story from a member of the Bar, who lived at the top of the old Cloisters building in the Temple before it was burnt, is simply of heavy footsteps heard coming up the stairs when no human presence was visible. The Temple had the reputation of a much haunted spot. I have heard a circumstantial and first-hand account of another footsteps "ghost" in a top floor flat in the monstrous pile of Temple Gardens, while a door-opening and dog-frightening ghost was reported to inhabit one of the sets in the old building that stood between Brick Court and Essex Court. Another Temple story, not the less interesting for being old, was recorded unexplained in the memorandum book of Paul Bowes of the Middle Temple, Treasurer in 1693. He relates how about the year 1658 he had chambers in Elm Court up three pairs of stairs, and one night, entering them in the dark, he laid down his gloves on his desk and felt under his hand a piece of money which, on striking a light, he found was a golden twenty-shilling piece. He was somewhat puzzled, since he could not explain its presence there, but dismissed it from his mind. Then about three weeks later the same thing happened again. A month went by and he found two gold pieces; six weeks passed and he found another. And so the finds went on, always in the same place and always in the dark, till they stopped after he had told the story to some friends. Nor could he ever guess how the money came there.

## GRAY'S INN GHOST

GRAY'S Inn had a ghost story of a rather different kind. Until the 'nineties of the last century a block of buildings on the west side of Field Court ran from the end of Fulwood's Rents to the edge of the gardens. Suddenly the most alarming occurrences began to happen there. Doors would open and shut without visible agency. Clocks would stop as if an unseen hand had arrested the pendulum. Cabinets would crash to the floor. One night a maid sleeping on the top floor awoke to find that her bed had shifted across the room in the night. Ominous creakings and groanings were heard. Ghost hunts were organised. Then a perfectly natural reason was discovered. The old building, which dated from the seventeenth century, had long been a little out of plumb. The demolition of an adjoining house had slightly increased the list, not perceptibly to the occupants but sufficiently to affect the furniture and to set up unaccustomed stresses in the structure. It had to be demolished and the site has remained vacant ever since.

## WHAT THE GHOST SAID

IT is hard to formulate a coherent theory to cover the apparitions related in the "sixth sense" stories, but the scientific people ought to welcome all this raw material for investigation and analysis (names and addresses supplied). Anyhow, whatever the ultimate explanation of them, they should somewhat abate the incredulous laughter with which we have been wont to dismiss similar stories emanating from our ancestors. Some of the dream or vision experiences have a sort of family resemblance to certain apparitions that have occasionally intermeddled with the course of British criminal justice. There was poor Anne Walker of Chester-le-Street, victim of her faithless and treacherous lover, a relation of the same name, who caused her to vanish without a trace on the lonely Durham fells. Soon afterwards a fuller named James Graham thought he saw her dishevelled and wounded and to him she described the hiding place of her body and the manner of her murder with a pick by one Mark Sharp, an accomplice of her lover. On the strength of her directions the body and the blood-stained pick were found. All this was circumstantially related at the Durham Assizes in 1631 when Walker and Sharp were convicted and condemned. The ghost of Sergeant Davies was less successful in the outcome of its communications. In his life Davies had been one of the English army of occupation in the Highlands after the suppression of the '45 rising. On 28th September, 1749, he vanished while out shooting in the mountains near Braemar. One night in the following June Alexander M'Pherson, a shepherd working at Glenclunie, saw approach his bed a figure which he took at first for a living man, but which announced itself as Davies, described how he had been murdered and indicated his body's hiding place so accurately that it was at once located. M'Pherson being, however, slow to give burial to the remains, the apparition returned a week later, this time naked, to remind him and to specify the names of the murderers. The bones were duly buried, but the cautious Highlanders were unwilling to stir the hostile authorities into action and it was not till 1754 that the alleged murderers were tried in Edinburgh. Quite apart from the apparition's story the Crown's case against them was strong, but in the age of reason the intrusion of a ghost was no help to the prosecution, especially when it was alleged that the spirit of the English-speaking sergeant spoke in Gaelic. The accused were acquitted, and doubtless there are plenty of social-political theories to account for the preternatural element in the story, but it still remains interesting.

RICHARD ROE.

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Mr. GWILYM LLEWELLYN has been appointed Registrar to the Caernarvonshire group of county courts and High Court Registrar at Bangor, in succession to Mr. W. R. Hughes.

Mr. BRINLEY RICHARDS, solicitor, of Maesteg, won the Chair at the Welsh National Eisteddfod this year for his ode, "The Valley." Last year's winner, Mr. Rolant Jones, of Llangefni, was also a solicitor.

Mr. D. C. NORTH has been appointed assistant solicitor in the Town Clerk's department at Leeds in succession to Mr. K. M. McCaw.

Mr. G. OGLETHORPE has been appointed clerk to the Ingleton Magistrates.

Major F. G. SCOTT, Clerk to the Oxfordshire County Council, has been appointed a Deputy Lieutenant of Oxfordshire.

# NOTES OF CASES

## JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

### TRADE UNION: DOMESTIC APPEAL PROCEDURE AGAINST "DECISION"

**White and Others *v.* Kuzych**

Viscount Simon, Lord Porter, Lord Morton of Henryton, Lord Reid and Lord Asquith of Bishopstone
20th June, 1951

Appeal from the Court of Appeal of British Columbia.

The rules of the trade union to which the plaintiff and the defendants belonged provided that members undertook, if found guilty of any offence against the union's rules, and if they felt the "decision" to be unfair or the penalty to be too severe, not to bring an action against the union until they had exhausted all the remedies by way of appeal allowed by the rules. The plaintiff brought an action against the defendants as representing the union, in respect of his expulsion from it, without having resorted to the remedies provided by the rules, because he contended that his expulsion from the union as a result of a report of its press and investigating committee on a charge against him of committing acts discreditable to the union and campaigning against the closed-shop policy which the union supported was a decision arrived at by methods contrary to natural justice, and so not a "decision" within the meaning of the rules binding him not to bring an action until he had exhausted the remedies provided by the rules. The courts in Canada (the Court of Appeal by a majority of three to two) held that the plaintiff had not been validly expelled from the union, and awarded him $5,000 damages. The defendants appealed.

VISCOUNT SIMON, giving the judgment of the Board, said that the view of Sloan, C.J., and Bird, J.A., was that the conclusion reached by the committee was a "decision" within the meaning of that expression in the byelaws even if it was tainted by bias or prejudice, or arrived at in defiance of natural justice, and even if the voting of some members might have been affected by intimidation. According to that view, those circumstances, or the allegation of them, would be matter for the consideration of the domestic appellate tribunal, and would not justify the contention that no appeal to that tribunal was possible because there was no "decision" to appeal against. After anxious reflection, their lordships had reached the conclusion that that was the correct view. The meaning of "decision" in the rule must be arrived at by examining the rules as a whole. This scheme manifestly was that members of the union designed to settle disputes between a member and the union in the domestic forum to the exclusion of the law courts, at any rate until the remedies provided by the constitution and byelaws were fully exhausted. If the question had been asked of the plaintiff, or of any of his fellow-members, "What was the decision of the committee?" the answer would have been, not that no decision had been given, but that the decision was to expel the plaintiff. And that would be so, not only because it was the natural reply for members of the union to give in the circumstances, but because it would be the right answer. "Decision" in the byelaw meant "conclusion." The refinement which lawyers might appreciate between a tribunal's "decision" and a conclusion pronounced by a tribunal which, though within the tribunal's jurisdiction, might be treated, because of the improper way in which it was reached, as no decision at all and therefore incapable of being subject to appeal, could not be attributed to the draftsman of those byelaws or to the trade unionists who adopted them as their domestic code. Appeal allowed.

APPEARANCES: *J. W. de B. Farris*, K.C., and *N. T. Nemetz*, K.C. (both Canadian Bar) (*Gard, Lyell & Co.*); *A. W. Johnson* (Canadian Bar) (*White & Leonard*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## HOUSE OF LORDS

### PROFITS TAX: SUM RECEIVED FOR WAR DAMAGE

**Birmingham Small Arms Co., Ltd. *v.* Inland Revenue Commissioners**

Lord Simonds, Lord Normand, Lord Oaksey, Lord Radcliffe and Lord Tucker. 20th June, 1951

Appeal from the Court of Appeal ([1950] W.N. 251).

The appellant company lost machinery and tools valued at £650,000 through an air-raid in November, 1940, and in 1947 received the sum to which they were entitled from the Board of Trade under s. 68 of the War Damage Act, 1941, which provided for payments in respect of goods which would have been insurable if the private chattels scheme had been in full operation when the damage occurred. They contended that the sum of £647,012 paid to them in satisfaction of the war-damage claim constituted "capital employed in" their business during the relevant period within the meaning of s. 13 (3) of, and para. 1 (1) (*c*) of Pt. II of Sched. VII to, the Finance (No. 2) Act, 1939, for the year from 1st August, 1940, to 31st July, 1941, operating as such in reduction of their liability to excess profits tax. The Court of Appeal, affirming Croom-Johnson, J., negatived the company's contention and they now appealed. The House took time for consideration.

LORD SIMONDS said that the scope and effect of excess profits tax was expounded by Viscount Simon, L.C., in *Inland Revenue Commissioners* v. *Terence Byron, Ltd.* (1945), 114 L.J.K.B. 345. From his observations it appeared that the question was what was the average amount of capital employed by the trade or business of the company during the accounting period. It was plain on the face of para. 1 (1) (*c*) that "capital employed" meant "assets employed." It was necessary to determine what were the assets employed in the trade or business. The company contended that the capital employed in a business was the same thing as the assets of the business, and that every asset of a trade or business was part of the capital employed in it unless expressly excepted by statute. But there was no reason for disregarding or giving no meaning to the word "employed." The commissioners held that the right here in question was not employed in the company's trade, and he (his lordship) saw no reason for disturbing their findings. It was urged for the company that the decision in *Terence Byron, Ltd.'s* case, *supra*, was inconsistent with that conclusion, and for the Crown that *Inland Revenue Commissioners* v. *Northern Aluminium Co., Ltd.* [1947] L.J.R. 685, supported it; but the exact point was not decided in either case. If the former case laid down any principle, it was that it was open to the commissioners to find as a fact whether an asset of the company was employed in its trade so that its value must be included in its capital so employed. The appeal should be dismissed.

The other noble lords concurred in the dismissal of the appeal. Appeal dismissed.

APPEARANCES: *J. Millard Tucker*, K.C., *F. Grant*, K.C., and *Maurice Lyell* (*R. A. Rotherham & Co.*); *Sir Frank Soskice*, K.C. (A.-G.), and *R. P. Hills* (*Solicitor of Inland Revenue*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### PROCEDURE: SERVICE OUT OF JURISDICTION

**Vitkovice Horni a Hutni Tezirstvo *v.* Korner**

Lord Simonds, Lord Normand, Lord Oaksey, Lord Radcliffe and Lord Tucker. 20th June, 1951

Appeal from the Court of Appeal (*sub nom. Korner* v. *Witkowitzer* [1950] 2 K.B. 128; 94 SOL. J. 269).

The plaintiff had held office with the defendants, a Czechoslovakian concern now nationalised. By the writ in this action he claimed money which he alleged to be due (*a*) under a pension agreement, and (*b*) under a service agreement. He also claimed damages for breach of contract. He contended that both pension and salary were, in the events which had happened, payable to him in London, that their non-payment was a breach of contract, and that the breaches had taken place within the jurisdiction of the court, namely, in London. The defendants applied to have the writ set aside. The master granted the application. Slade, J., affirmed that order, but the Court of Appeal (Bucknill and Singleton, L.JJ.; Denning, L.J., dissenting) reversed his decision. The defendants now appealed. The House took time for consideration.

LORD SIMONDS said that the grounds of the application to set aside the writ were (1) that there was no jurisdiction to make the order for service out of the jurisdiction or to try the action; (2) that, if there was jurisdiction, the discretion of the court should not have been exercised in the plaintiff's favour; (3) that the *forum conveniens* was Czechoslovakia. It was further contended that the Court of Appeal ought not to have interfered with the exercise of the judge's discretion. The plaintiff replied (1) that the judge did not purport to exercise his discretion at all, but, adopting a wrong construction of the relevant rules, held

that he had no jurisdiction to make the order, and (2) that the Court of Appeal did exercise its discretion on right principles and therefore that its order should not be disturbed. In his (his lordship's) opinion, Slade, J., did not exercise his discretion. Holding that he had no jurisdiction, he did not purport in any way to exercise his discretion. He held that he had no jurisdiction because, he said, he was not satisfied that there was a breach within the jurisdiction. But the obligation on the plaintiff was not to satisfy the court that he was right but to make it sufficiently appear that the case was a proper one for service out of the jurisdiction. The court on such an application was not called on to try the action or express a premature opinion on its merits (see *per* Lord Davey in *Chemische Fabrik Vormals Sandoz* v. *Badische Anilin und Soda Fabriks* (1904), 90 L.T. 733, at p. 735). When the judge said that he was not satisfied that there had been a breach within the jurisdiction he could only have meant that the plaintiff had not proved that fact beyond all reasonable doubt. That was something quite different from the burden which the rule imposed, for the plaintiff could make it sufficiently appear that the case was a proper one for service out of the jurisdiction while falling short of the standard of proof which must be attained at the trial. If that were not so it would become the duty of the court to try the action on the preliminary investigation. It was hard to say precisely what test must be passed to make it sufficiently appear that the case was a proper one; but, for the purpose of this appeal, it was enough to say, negatively, that the judge was wrong in thinking that the court had no jurisdiction to grant leave because he was not satisfied that there had been a breach within the jurisdiction. On this footing it was competent for the Court of Appeal to review the judge's order and in the exercise of its discretion to make such order as it thought fit. Appeal dismissed.

The other noble lords agreed that the appeal failed. Appeal dismissed.

APPEARANCES: *F. W. Beney*, K.C., and *Clive Burt* (*Blyth, Dutton & Co.*); *Sir Andrew Clark*, K.C., and *Dennis Lloyd* (*Rubinstein, Nash & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### CONTRACT: IMPLIED TERM

**Sethia (1944), Ltd. *v.* Partabmull Rameshwar**

Lord Porter, Lord Normand, Lord Oaksey, Lord Radcliffe and Lord Asquith of Bishopstone. 28th June, 1951

Appeal from the Court of Appeal (94 SOL. J. 112).

Dealers in jute carrying on business in Calcutta entered into four contracts in July and September, 1947, for the supply to buyers in England of 3,500 bales of jute to be shipped to Italy. Under a licensing system in force in India the Indian Government in February, 1947, had notified the jute trade that regulations were to be made fixing a quota for jute shipments. The quotas were fixed on the shipments made in a basic year selected by the shipper. As the sellers had selected 1946, in which year they had made no shipment of jute to Italy, they were unable, despite applications, to obtain a quota for that country and were unable, consequently, to carry out their contracts. The buyers claimed damages for breach of contract. The committee of the London Jute Association, on appeal from four arbitrators, awarded the buyers £14,273 damages. Lord Goddard, C.J., affirmed the award of the committee. The sellers contended on the appeal that, in order to give business efficacy to the contracts which were made at a time when, to the knowledge of both parties, a licensing system regulating the jute trade was in force, there must be implied with them a term absolving the sellers from liability if, having exercised all reasonable diligence, they were unable to obtain a licence to ship. *In re Anglo-Russian Merchant Traders, Ltd., and John Batt & Co. (London)* [1917] 2 K.B. 679 was relied on. The Court of Appeal affirmed Lord Goddard, C.J., and held, distinguishing the case cited, that the alleged term could not be implied. The sellers now appealed. The House took time for consideration.

LORD PORTER said that in terms the contract contained no limitation on the seller's obligation to supply or ship the goods; it was for him, if he sought to be excused, to set up and prove facts that would exonerate him. *Prima facie* he was liable and the onus was on him to establish circumstances which discharged that liability. But the facts as found, so far from constituting an excuse for non-performance, rather showed that an absolute liability was intended or, at any rate, that the *prima facie* obligation was not abrogated. The seller alone had the means of ascertaining what he had obtained or was likely to obtain, and he knew that the goods could not be shipped under a c.i.f. contract until he had received permission to put them on board. On the other hand, for all the buyers knew, the seller might have had a quota sufficient to fulfil the whole of his contracts. Moreover, the seller knew, as the buyers did not, that the basic year which he had chosen was one in which he had no Italian contracts. The steps to be taken were for the seller to determine and it was not clear what steps were taken or, indeed, how far he took all reasonable measures to fulfil his obligations. The onus being on him to establish a defence, one was not entitled to infer that he had a valid excuse for his failure to obtain a licence to ship.

The other noble lords concurred in dismissal of the appeal. Appeal dismissed.

APPEARANCES: *D. N. Pritt*, K.C., and *John Hobson* (*Linklaters and Paines*); *D. A. Scott Cairns*, K.C., *B. J. M. MacKenna*, K.C., and *R. I. Threlfall* (*Stuart Hunt & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF APPEAL

### CONTRACT OF SERVICE: EXPENSES ALLOWANCE TO AVOID INCOME TAX

**Napier *v.* National Business Agency, Ltd.**

Evershed, M.R., Denning and Hodson, L.JJ. 7th June, 1951

Appeal from the Mayor's and City of London Court.

The plaintiff was employed by the defendants as secretary and accountant under a written contract providing for a salary of £13 a week with an expenses allowance of £6 a week, and for determination of the contract by reasonable notice. The company dismissed the plaintiff without notice, paying him four weeks' salary (less tax) and expenses. By these proceedings the plaintiff claimed six months' salary and expenses. The judge held that three months would have been reasonable notice, but he dismissed the action, holding that the contract of service was illegal, and so unenforceable, because of the provision for the expenses allowance which both parties, he found, knew to be entirely unjustified, so that it should have counted as salary and been paid less tax. He also found that the plaintiff was intending to allow that situation, with avoidance of tax, to go on as long as possible. The plaintiff appealed.

EVERSHED, M.R., said that he thought it impossible for the court to say that the judge was disentitled to find that the plaintiff and the defendant company made their bargain knowing well that the figure for the weekly sum for expenses was a sham. If that was the right conclusion, it seemed clear that the agreement must be regarded as contrary to public policy and that the plaintiff was a deliberate participator in a form of contract which would have the effect of evading proper payment of income tax. The effect was that the contract was so tainted that the court would not enforce it.

DENNING and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *A. H. Bray* (*William Charles Crocker*); *Frank Whitworth* and *P. G. Hawkins* (*Bartlett & Gluckstein*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### EVIDENCE: WORKMEN'S COMPENSATION FORM COMPLETED BY WORKMAN BEFORE HIS DEATH

**Jarman *v.* Lambert & Cooke Contractors, Ltd.**

Evershed, M.R., Denning and Hodson, L.JJ. 8th June, 1951

Appeal from McNair, J.

A workman received an injury in the course of his work in 1947 and completed a form supplied to him by his approved society for a claim for workmen's compensation, giving particulars of how his accident had happened. His solicitor then notified his employers that the workman would claim damages by action against the defendants as the persons who had been responsible for his injury. After the action had been instituted, the workman's injury became worse and he died of it, his widow being substituted as plaintiff. The question arose in the action whether the form which the deceased had filled in was admissible as evidence by virtue of ss. 1 and 2 of the Evidence Act, 1938. McNair, J., held that it was not, and the plaintiff appealed.

EVERSHED, M.R., referred to *Whitelocke* v. *Baker* (1807), 13 Ves. 511, at p. 514, and negatived the suggestion that the fact that the Act of 1938 introduced a great innovation should influence its construction. Section 2 (1) showed that the Legislature must have contemplated that under this Act documents

might be admitted which did not have that impartiality to which Lord Eldon, L.C., had alluded. The Act stated that admission was one thing but the weight to be attached to the document when admitted was another. Parliament was content to rely upon the experience of the judges not to give to a document, which might be in a measure tendentious, any more weight than it justly deserved. The matter had to be determined according to the ordinary sense of s. 1 (3) and by asking whether, at the time when the form was filled up, it could be said that proceedings were "anticipated" involving a dispute as to any fact which the statement might tend to establish. As a matter of English it seemed to him that when the form was signed by the workman proceedings were not anticipated involving a dispute. The form was filled up to establish a claim under the Workmen's Compensation Act, 1925. The court had to determine at a later date what was the state of mind of the relevant person at a former date, namely, when the statement was made. He was prepared to accept the view that in s. 1 (3) "proceedings were anticipated" meant "proceedings were regarded as likely" or even as "reasonably probable." He did not think that that test was satisfied here: the proceedings were not "anticipated" within the meaning of the subsection when the form was filled up. The case was wholly different from *Robinson* v. *Stern* [1939] 2 K.B. 260. The appeal should be allowed.

DENNING and HODSON, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Tristram Beresford*, K.C., and *L. Halpern* (*Leonard Kasler*); *Humfrey Edmunds* (*Hewitt, Wollacott and Chown*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## POST-NUPTIAL SETTLEMENT: INSURANCE POLICY

### Lort-Williams *v.* Lort-Williams

Somervell, Denning and Hodson, L.JJ. 12th June, 1951

Appeal from Wallington, J. ([1951] W.N. 314).

The appellant husband took out an insurance policy which provided that the sum assured should be paid to trustees "as trustees of the moneys payable under this policy effected for the benefit of the widow or children . . . of the assured . . . in such manner as the assured shall . . . appoint . . ." The wife obtained a decree of divorce, and then applied, under s. 25 of the Matrimonial Causes Act, 1950, for variation of the post-nuptial settlement stated to have been created by the policy. Wallington, J., affirming the report of a registrar, held the policy to be a post-nuptial settlement and variable accordingly. The husband now appealed. By s. 11 of the Married Women's Property Act, 1882, "a policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his . . . debts."

SOMERVELL, L.J., said that the sole question before the court was whether the policy constituted a post-nuptial settlement within s. 25 of the Act of 1950. Counsel for the husband had not only relied on the fact that the interest of the wife was contingent, for she had to survive the husband as his widow, but had argued that the policy was not a nuptial settlement because it had not the then-existing marriage in mind any more than any other marriage. He (his lordship) did not agree. The interests of the wife under the policy were of course contingent and uncertain but, considering that the policy was taken out during the married life and undoubtedly with the object of creating a fund from which the wife might benefit subject to the exercise of the power of appointment in her favour, it seemed to him that it was *prima facie* a nuptial settlement in respect of the marriage then existing. It did not cease to be that because it also, by using the word "widow," provided for certain other contingencies, among them the possibility of a second marriage and of the husband's leaving someone other than his then-existing wife as his widow. Applying ordinary common sense to the matter, he did not think that a settlement ceased to be a nuptial settlement because in certain contingencies the wife of a subsequent marriage, if there were one, might be the person to take. Section 25 therefore applied.

DENNING and HODSON, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *Geoffrey Cross*, K.C., and *W. R. K. Merrylees* (*J. D. Langton & Passmore*); *J. E. S. Simon*, K.C., and *A. H. Ormerod* (*Withers & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## LIBEL AND SLANDER: SEPARATE TRIALS

### Bridgmont *v.* Associated Newspapers, Ltd., and Others (No. 2)

Somervell, Denning and Hodson, L.JJ.
12th June, 1951

Appeal from Slade, J., in chambers.

The plaintiff complained of an alleged libel in an article in the *Daily Mail* written by the second defendant. He also complained of slanders alleged to have been uttered by that defendant in that he asserted that the plaintiff was one of the persons referred to in the article. The plaintiff claimed damages for libel and slander in one action, the defendant company being alleged to be liable for the slanders because they were uttered by the second defendant in the course of his employment by the company. Slade, J., made an order under R.S.C., Ord. 18, rr. 1, 8 and 9, that the two causes of action should be tried separately, the plaintiff to deliver two new statements of claim. The plaintiff appealed.

SOMERVELL, L.J., having referred to *Pearson* v. *Lemaitre* (1843), 5 M. & Gr. 700, and Gatley on Libel and Slander, 3rd ed., p. 626, said that the defendant company did not dispute that in certain circumstances a defendant was entitled to give in reduction of damages evidence as to his intention of a kind contrary to that which the plaintiff sought to bring forward here [by reference to the alleged slander]. They based their submission on the fact that on the pleadings they could not give a notice mitigating damages, and that, that being so, the plaintiff ought not to be allowed to lead evidence, with regard to damages, of the kind indicated. He (his lordship) did not think that the defendants, by not mitigating, could affect the right of the plaintiff to lead evidence relevant to damages which might lead to their increase. Injustice might be done if the mere fact that a slander action had been added to an action for libel precluded the calling of evidence of this kind, which otherwise would be material. On the pleadings there was no issue of malice in the ordinary sense, but that was not necessary in order to make evidence connected with the alleged slanders relevant to damages.

DENNING and HODSON, L.JJ., concurred. Appeal allowed.

APPEARANCES: *D. A. Scott Cairns*, K.C., and *Dennis Lloyd* (*Rubinstein, Nash & Co.*); *H. P. J. Milmo* (*Lewis & Lewis and Gisborne & Co.*); *J. Thompson* (*Blount, Petre & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## INJURY TO SPECTATOR WATCHING MATCH

### Murray *v.* Harringay Arena, Ltd.

Cohen, Singleton and Morris, L.JJ.
15th June, 1951

Appeal from Ormerod, J. (*ante*, p. 123).

The plaintiff was admitted on payment to Harringay Arena, of which the defendants were the occupiers. They promoted ice-hockey matches there. While the plaintiff was watching a match from the front row a puck used in the match left the arena and struck him in the eye and injured him. There was a barrier three feet high between the arena and the plaintiff's seat, which was at the side. There was netting 8 feet 9 inches high at either end of the arena. The plaintiff contended that the defendants had been negligent in failing to make the premises as free from danger as reasonable care and skill could make them. They contended that he must be presumed to have undertaken the risk of such an accident. Ormerod, J., dismissed the action and the plaintiff now appealed. (*Cur. adv. vult.*)

SINGLETON, L.J., delivering the judgment of the court, said that, as was pointed out in *Hall* v. *Brooklands Auto Racing Club* [1933] 1 K.B. 205, there was no absolute warranty of safety in a case like this, but only an undertaking by the occupier of the premises to take due care to ensure safety; and what might be due care would depend on the perils which might reasonably be expected to occur, and on the extent to which the ordinary spectator might be expected to appreciate and accept the risk of such perils. It was for the plaintiff to make out his case. Hockey was not a game which was intrinsically dangerous to spectators, and ice-hockey was no more dangerous than ordinary hockey. There was no obligation to protect the spectator against such dangers as might be incidental to a game, which any spectator could reasonably foresee, and of which he took the risk. The fact that the plaintiff was an infant would not justify the court in extending the duty which the law laid on the

defendants. The plaintiff had failed to prove that the defendants had omitted to take reasonable precautions. Appeal dismissed.

APPEARANCES: *Scott Henderson*, K.C., and *H. G. Garland* (*Bishop & Cooke*); *Montague Berryman*, K.C., and *R. M. Everett* (*Gardiner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### APPEAL DISMISSED FOR NON-APPEARANCE: JURISDICTION TO REINSTATE

**Brooksbank *v.* J. L. Rawsthorne & Co.**

Singleton and Morris, L.JJ., and Harman, J.
25th June, 1951

Motion for reinstatement of an appeal.

There being no appearance in court by the plaintiff in support of his appeal, the court dismissed the appeal on the defendants' application but directed that the order should not be drawn up before 2 p.m. on the following day. The order was duly drawn up on 30th May, 1951. The plaintiff now applied by motion to have the appeal reinstated. It was explained that the failure of the plaintiff and his legal representatives to attend on 29th May was due to a mistake in the office of the London agents of the plaintiff's solicitors. It was contended for the plaintiff that, although dismissed, the appeal had not been determined, and that therefore the court had jurisdiction to reinstate it. It was submitted for the defendants that, as the appeal had not been merely struck out but dismissed, it had been determined, and that the court had no jurisdiction to undo what it had done.

SINGLETON, L.J., said that this was an appeal from the Northern Circuit. The Master of the Rolls had arranged that such appeals should be taken at stated times, full notice of which was given. His lordship referred to *Flower* v. *Lloyd* (1877), 6 Ch. D. 297, and to *Hession* v. *Jones* [1914] 2 K.B. 421, where, at p. 423, Bankes, J., drew attention to the distinction between the position where an appeal had been struck out because the appellant had failed to attend, and the position where an application was made to set aside a determination made after a hearing, and said that in the latter case the court held that it had no jurisdiction to make the order asked for. He also referred to *Rackham* v. *Tabrum* (1923), 39 T.L.R. 380. In his opinion, the present appeal had never been heard and determined by that court, and in the circumstances the court had jurisdiction to hear the application and to make such order as it thought proper. This, however, was not an ordinary example of a case being overlooked in the day's list. Solicitors practising on the Northern Circuit knew that there was a special list and when it would be taken. The court ought not to interfere.

MORRIS, L.J., and HARMAN, J., agreed. Application refused.

APPEARANCES: *H. G. Garland* (*McKenna & Co.*, for *G. Holmes Mossop*, Liverpool); *B. Caulfield* (*Hair & Co.*, for *Laces & Co.*, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### DE-RATING: ARTICLES SPECIALLY PACKED FOR EXPORT

**Cockram *v.* Tropical Preservation Co., Ltd.**

Evershed, M.R., Jenkins and Birkett, L.JJ. 11th July, 1951

Case stated by the Lands Tribunal for the decision of the Court of Appeal under s. 3 (4) of the Lands Tribunal Act, 1949, and R.S.C., Ord. 58B.

The appellant, the valuation officer for the Northampton Valuation Area, appealed against a decision of a local valuation court for the Administrative County of Northampton and the County Borough of Northampton joint local valuation panel area, given at Northampton on the 23rd May, 1950, in respect of a hereditament occupied by the respondents, Tropical Preservation Co., Ltd., and entered in Pt. I of the valuation list for the Brackley rural district and therein described as "Warehouse and premises, Main Site, Chipping Warden R.A.F. Station, Chipping Warden, Banbury," with a gross value of £340 and a rateable value of £280. Section 3 (1) of the Rating and Valuation (Apportionment) Act, 1928, defines an "industrial hereditament" by reference to the definition in s. 149 (1) of the Factory and Workshop Act, 1901, by virtue of which subsection premises are an industrial hereditament if on them is carried out any operation "being in, or incidental to, the making of any article . . . the altering, repairing . . . or finishing of any article, or the adapting for sale of any article." The respondent company carried on, on premises occupied by them, a special form of packing which they called "packaging," the effect of which was to make it possible for the articles packed —spare parts for motor vehicles, which spare parts were manufactured by others and sent to the company for "packaging" —to be stored for protracted periods in adverse climatic conditions at their export destinations. The articles, when delivered to the company, were fit for use in this country, but were not in a fit condition for export and storage abroad. The special processes applied in the packing protected the spare parts against damage by excess humidity and extremes of temperature and other hazards of storage, and included processes such as applying temporary protective dressings and placing the articles in waterproof containers or wrappings. The Lands Tribunal held that the premises were an industrial hereditament and so eligible for de-rating. The valuation officer appealed.

EVERSHED, M.R., said that the premises were an industrial hereditament within the definition in s. 149 (1) of the Act of 1901 because the operations of the company had the effect of converting into something slightly different the articles sent to them for special packing. The operations satisfied the test laid down by Lord Dunedin in *Grove* v. *Lloyd's British Testing Co., Ltd.* [1931] A.C. 446, at p. 447, where he said: "I think 'adapting for sale' points clearly to something being done to the article in question, which in some way makes it a little different from what it was before." The articles packed could be regarded either as having been given additional qualities without the addition of which they would not have answered the requirements of their ultimate purchasers or as being converted from what they were into specially packed articles; they were not packed merely for safe arrival and use immediately thereafter, but also for storage and preservation for a considerable time after arrival at their destination. The appeal failed.

JENKINS and BIRKETT, L.JJ., gave judgments agreeing that the appeal should be dismissed.

APPEARANCES: *Erskine Simes*, K.C., and *P. R. E. Browne* (*Solicitor of Inland Revenue*); *Ramsay Willis* (*Gregory, Rowcliffe and Co.*, for *Wright, Hassall & Co.*, Leamington Spa).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## KING'S BENCH DIVISION

### P.A.Y.E.: EMPLOYER'S CLAIM AGAINST EMPLOYEE

**Bernard & Shaw, Ltd. *v.* Shaw; Rubin, third party**

Lynskey, J. 7th June, 1951

Action.

The plaintiff company paid the defendant £1,682 as salary for a certain period, but did not deduct the £709 10s. due on that salary as income tax for that period. The Inland Revenue authorities claimed that sum from the company, who by this action sought to recover it from the defendant as money had and received.

LYNSKEY, J., said that the defendant had received the sum in question as remuneration, and it could not be said that there had been any mistake of fact in the making of the payment. Even without authority it seemed to him (his lordship) that the defendant did not receive the £709 10s. to the use of the company; but any doubt about that matter was resolved by *Denby* v. *Moore* (1817), 1 B. & Ald. 123, where the court held that an occupier of land who for twelve years had paid the landlord's property tax to the tax collector, and the full rent to the landlord without deduction on account of the tax so paid, could not recover from the landlord any of the property tax which the occupier had paid. That decision proceeded on the basis that, as the payment had not been deducted at the proper time, it could not afterwards be claimed in an action of assumpsit for money had and received. Counsel for the company then argued that, because there was a legal liability on the company to pay tax to the tax authorities, the company were entitled to recover it from the defendant; but he (his lordship) knew of no such form of action, although the position might have been different had the company in fact paid the tax. According to the regulations an employer who failed to deduct tax from remuneration in respect of one period could deduct it at a later period from remuneration due to the same employee; but the employer's only remedy under the Acts and regulations was by deduction: he had no power to obtain from his employee sums which he ought to have deducted but in fact did not. Judgment for the defendant.

APPEARANCES: *H. Lester* (*Conway & Conway*); *Leonard Caplan* (*Kaufman & Seigal*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law

## VENDOR AND PURCHASER: HUSBAND'S SALE OF MATRIMONIAL HOME

**Thompson *v.* Earthy**

Roxburgh, J.
(sitting as an additional judge of the King's Bench Division)
8th June, 1951

Action.

A husband and wife lived in the house which was their matrimonial home from 1935. In 1946 justices found the husband guilty of desertion but made a maintenance order for less than they would otherwise have done in consideration of his allowing the wife and the children of the marriage to remain in the matrimonial home free of rent and all outgoings. In 1950 the husband sold the house to the plaintiff, who brought this action for possession against the wife.

ROXBURGH, J., said that *Old Gate Estates, Ltd.* v. *Alexander* [1950] 1 K.B. 311; 93 SOL. J. 726, was distinguishable in that it was a case between husband and wife. So far as he knew there was no legal obstacle to prevent the purchaser from bringing an action in tort against the wife. The real question was whether or not the wife had any legal or equitable interest in the premises which bound them in the hands of a purchaser. He (his lordship) had never heard of any estate or interest in land of that character. The authorities suggested that there was not. For instance, Denning, L.J., in the case cited, [1950] K.B., at p. 319, was careful to point out that the wife was not the sub-tenant or licensee (he (Roxburgh, J.) wished to stress the word "licensee") of her husband. He would pause long before declaring the existence of a new species of equitable right hitherto never suggested, particularly as the vendor, at any rate, had a remedy under the Married Women's Property Act. But the plaintiff purchaser could not apply under that Act, and would be in a worse position than the vendor from whom she had purchased if the defendant had the right suggested. The purchaser had proved her title to the land. The wife had proved no estate or interest, legal or equitable, in the land. She was accordingly a trespasser and must deliver up possession to the plaintiff. Judgment for the plaintiff.

APPEARANCES: *Michael Hoare* (*Warmingtons*); *Lionel Jellinek* (*Reginald Johnson & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## DIVISIONAL COURT

## DESERTION: REPEAL OF STATUTE

**R. *v.* Secretary of State for War; *ex parte* Halperin**

Lord Goddard, C.J., Hilbery and Ormerod, JJ.
27th June, 1951

Application for an order of certiorari.

The applicant was deemed to be an enlisted soldier under the National Service (Armed Forces) Act, 1939. A calling-up notice was sent to him to his last-known address on 13th January, 1943, telling him to report on 21st January. The letter having been correctly addressed and never returned to the sender, the applicant was deemed to be enlisted as from 21st January, 1943, and became a serving soldier liable to military law. He never reported for service, and was eventually charged with absenting himself from duty from 21st January, 1943, to 4th April, 1951, the date of his arrest. He was convicted and sentenced by a court martial on 8th May, 1951, to a year's detention in military custody. He now appealed for an order quashing his conviction.

LORD GODDARD, C.J., said that the main point taken for the applicant was that he could not have been deemed to have been a deserter after 31st December, 1948, because, as from that date, the Act of 1939, under which he had been called up, had been repealed by the National Service Act, 1948. By s. 24 (2) of that Act a person who was enlisted under s. 4 of the Act of 1939 "for a term or period ending with the present emergency and is serving in pursuance of that engagement or enlistment at the commencement of this Act shall . . . continue to serve in pursuance thereof for that time or period." It was suggested that the applicant was not serving in pursuance of his engagement because he had deserted. It was a very novel proposition that a soldier was no longer a serving soldier and subject to military law, because he had deserted. Section 60 (2) of the Act of 1948 provided that the repeal of the Act of 1939 "shall not affect the operation of s. 21 (2) of that Act as respects persons who have been entered or enlisted under s. 4 of that Act for a term or period ending with the present emergency and are serving in pursuance of that engagement or enlistment at the commencement of this Act." That was what the applicant was doing. When the Act of 1948 came into force on 1st January, 1949, he, having enlisted under the Act of 1939, was still serving under that Act because he had not been discharged; and he was therefore a serving soldier under the Act in pursuance of his engagement thereunder. Sections 158 and 161 of the Army Act did not assist the applicant. The application failed.

HILBERY and ORMEROD, JJ., agreed. Application refused.

APPEARANCES: *P. A. W. Merriton* (*Beach & Beach*); *Sir Frank Soskice*, K.C. (A.-G.), and *J. P. Ashworth* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

## COURT OF CRIMINAL APPEAL

## LARCENY: RECEIVING: ALTERNATIVE COUNTS

**R. *v.* Christ ***

Lord Goddard, C.J., Lynskey and Devlin, JJ.
11th June, 1951

Appeal from conviction.

The appellant and another man were indicted at Hertford Quarter Sessions on alternative counts of stealing and receiving a quantity of lead. On the night of the theft the two men were seen with a parcel in a field near the house from which the lead had been stolen. The chairman left to the jury the counts of larceny and of receiving. They acquitted both men of larceny but found the appellant guilty of receiving. They were unable to agree on whether or not the other prisoner was guilty of receiving. The appellant was convicted accordingly. He now appealed from that conviction.

LORD GODDARD, delivering the judgment of the court, said that, while it might conceivably be possible that there was some evidence of receiving in that it was conceivable that the men might have received the lead from the people who had actually stolen it, it was impossible to believe that the jury, particularly in the light of the summing up, could have acquitted the men of larceny except on the view that they had reasonable doubt about the police evidence; and it might be that, in the appellant's case, that doubt was assisted by the fact that he called some evidence of an alibi to show that he was doing something else that night. However that might be, it seemed plain to the court that those two verdicts were quite inconsistent and could not stand together. It was impossible to believe that the jury could have accepted the evidence of the police, upon which alone they would be justified in convicting him of receiving, and at the same time have rejected it, or not accepted it, in the case of larceny. In the opinion of the court, therefore, the verdict must be regarded as a perverse one in the sense of a verdict at which the jury, if they had correctly appreciated the issues which they had to try, could not reasonably have arrived. The conviction must, therefore, be quashed. He would, however, add this: In many cases it was uncertain, where a man had been found in possession of property or seen to be associated with property, whether the evidence for the prosecution would ultimately satisfy the jury that he was guilty of stealing it or of receiving it, and where, therefore, the indictment, very properly, charged both counts, they must necessarily be alternative; and it might well be, even in such a case as the present, that it was desirable that the two counts should be laid before the jury, for it is conceivable that the defence might take such a turn, or might raise such other facts, as would make the count of receiving one which it was desirable for the jury to consider. But if, after the evidence had been given and counsel had concluded their addresses, it became apparent, as here, that it was a case of larceny or nothing, it was very desirable that the trial judge, in his summing up, should put simply to the jury the count of larceny, and leave out altogether from their consideration the alternative count of receiving. Had that been done here, there would have been no possibility of any confusion. It would much simplify matters for the consideration of a jury in this type of case if, as soon as it became apparent what the real charge must be on which, if they were going to convict at all, they must convict, that charge alone were left to them. Appeal allowed.

APPEARANCES: *D. Fairbairn* (*Registrar, C.C.A.*); *Edward Clarke* (*D.P.P.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

* Reporter's note: cf. *R.* v. *Loughlin*, *ante*, p. 516.

# SURVEY OF THE WEEK

## HOUSE OF COMMONS

### Questions

#### Stipendiary Magistrates (Salaries)

Mr. Chuter Ede said that ten stipendiary magistrates had received increases in salary since the war, including three whose increases were granted with effect from 1st April, 1945. In one case a higher salary had been paid on the making of a new appointment. He agreed to review the salaries of stipendiary magistrates in the light of recent increases granted to Metropolitan magistrates, but said that negotiations were apt to be protracted as local authorities, even when willing to move, were not always prepared to go quite as far as he would like. The salaries of magistrates' clerks were a matter for recommendations to him by the appropriate authority. [2nd August.

#### Anatomy Bequests

Asked by Dr. King whether he would consider amending the Anatomy Acts, 1832–1871, so as to make it easier for persons to bequeath their eyes for use after death to cure the sightless, Mr. Marquand said he was advised that this matter was not governed by the Anatomy Acts, but by common law. [2nd August.

#### Rent Restriction Acts

Mr. Lindgren said information was not available as to how many local authorities had appointed committees for the purpose of publishing information for the assistance of landlords and tenants as to their rights and duties under the Rent Restriction Acts, and as to the procedure for enforcing such rights or securing performance of such duties under the provisions of s. 10 (2) of the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933. Mr. Janner asked that the attention of local authorities be drawn to the importance of publishing information concerning decisions of the courts on matters rising under the Rent Restriction Acts. Mr. Lindgren said the local authorities were generally aware of the power to publish such information. Important decisions of the courts on rent cases normally received full publicity in the press. [2nd August.

#### Sub-tenants (Ejection)

Mr. Lindgren said the question of introducing legislation to protect from ejection married sons or daughters who were residing as sub-tenants with parents in the event of the death of the tenant would be considered when the Rent Restriction Acts were reviewed, but there was no prospect of early legislation. [2nd August.

## STATUTORY INSTRUMENTS

**Bracknell New Town** Sewerage Order, 1951. (S.I. 1951 No. 1417.)

**Building Plasters** (Prices) (No. 3) Order, 1951. (S.I. 1951 No. 1379.)

**Carriage by Air** (Parties to Convention) Order, 1951. (S.I. 1951 No. 1386.)

**Coal Distribution** (Amendment) (No. 2) Order, 1951. (S.I. 1951 No. 1412.)

Coal Distribution (Restriction) (Amendment) Direction, 1951. (S.I. 1951 No. 1413.)

**Coal Industry** (Workmen's Compensation Liabilities) (Durham) Order, 1951. (S.I. 1951 No. 1387.)

**County Court** Fees (Amendment) Order, 1951. (S.I. 1951 No. 1403 (L. 8).)

This order alters the fees payable on entering an appeal in the county court and makes the fee payable on delivery of a counter-claim henceforth payable by any party delivering a counter-claim, not, as heretofore, only by a defendant or respondent. Rules as to fees are prescribed in respect of proceedings under the Maintenance Orders Act, 1950, and the Reserve and Auxiliary Forces (Protection of Civil Interests) Act, 1951.

**Dominica** (Legislative Council) Order in Council, 1951. (S.I. 1951 No. 1392.)

**Double Taxation** Relief (Taxes on Income) (France) Order, 1951. (S.I. 1951 No. 1388.)

**Eggs** (Great Britain and Northern Ireland) (Amendment No. 5) Order, 1951. (S.I. 1951 No. 1453.)

**Fire Services** (Ranks and Conditions of Service) (No. 3) Regulations, 1951. (S.I. 1951 No. 1375.)

**General Apparel** (Manufacturers' Maximum Prices and Charges) (Amendment No. 4) Order, 1951. (S.I. 1951 No. 1366.)

**Goods Vehicles** (Licences and Prohibitions) (Amendment) Regulations, 1951. (S.I. 1951 No. 1427.)

**Grenada** (Legislative Council) Order in Council, 1951. (S.I. 1951 No. 1393.)

**Hairdressing Undertakings** Wages Council (Great Britain) Wages Regulation Order, 1951. (S.I. 1951 No. 1371.)

**Harpenden** Water Order, 1951. (S.I. 1951 No. 1360.)

**Hill Cattle** Subsidy Payment (Northern Ireland) Order, 1951. (S.I. 1951 No. 1374.)

**House of Commons** (Redistribution of Seats) (Cardiff, Barry and Monmouth) Order, 1951. (S.I. 1951 No. 1390.)

**Import Duties** (Exemptions) (No. 10) Order, 1951. (S.I. 1951 No. 1415.)

**Imported Canned Fruit** (Amendment) Order, 1951. (S.I. 1951 No. 1400.)

**Industrial Disputes** Order, 1951. (S.I. 1951 No. 1376.)

**Laundry** (Maximum Charges) (Amendment) Order, 1951. (S.I. 1951 No. 1367.)

**Local Government** (Payments by British Transport Commission) (Adjustment) Order, 1951. (S.I. 1951 No. 1406.)

**London Traffic** (Prescribed Routes) (No. 17) Regulations, 1951. (S.I. 1951 No. 1404.)

London Traffic (Prescribed Routes) (No. 18) Regulations, 1951. (S.I. 1951 No. 1426.)

**Medical Act, 1950** (Judicial Committee Rules) Order, 1951. (S.I. 1951 No. 1383.)

This order lays down rules of procedure for appeals under s. 20 of the Medical Act, 1920. A schedule of fees allowed to agents conducting appeals or other matters before the Judicial Committee is appended.

**National Health Service** (Remuneration and Conditions of Service) Regulations, 1951. (S.I. 1951 No. 1373.)

**National Insurance** (Mariners) Amendment Regulations, 1951. (S.I. 1951 No. 1411.)

**North of Scotland Hydro-Electric** Board (Constructional Scheme No. 52) Confirmation Order, 1951. (S.I. 1951 No. 1396 (S. 72).)

**Nurses** Rules, Approval Instrument, 1951. (S.I. 1951 No. 1372.)

**Patents,** etc. (Egypt) (Convention) Order, 1951. (S.I. 1951 No. 1389.)

**Public Health** (Infectious Diseases) (Scotland) Amendment Regulations, 1951. (S.I. 1951 No. 1414 (S. 73).)

**Purchase Tax** (No. 5) Order, 1951. (S.I. 1951 No. 1357.)

**Reserve and Auxiliary Forces** (Protection of Civil Interests) Rules, 1951. (S.I. 1951 No. 1401.)

These rules came into operation on 15th August and make provision as to procedure under the Act in both the High Court and county court.

Reserve and Auxiliary Forces (Protection of Civil Interests) (Business Premises) Regulations, 1951. (S.I. 1951 No. 1402.)

These regulations prescribe a form of notice to be used by a landlord requiring a tenant to elect whether or not to apply for the grant of a new tenancy of business premises under the Act.

Reserve and Auxiliary Forces (Protection of Friendly Society Life Policies) Regulations, 1951. (S.I. 1951 No. 1408.)

Reserve and Auxiliary Forces (Protection of Industrial Assurance &c. Policies) Regulations, 1951. (S.I. 1951 No. 1407.)

**Retail Bookselling and Stationery** Trades Wages Council (Great Britain) Wages Regulation (Amendment) Order, 1951. (S.I. 1951 No. 1370.)

**Revocation of Navigation Rights** (River Don from Newton Hauling Bridge to Mill Bridge) Order, 1951. (S.I. 1951 No. 1416.)

**Road Vehicles** (Index Marks) Regulations, 1951. (S.I. 1951 No. 1380.)

Road Vehicles (Registration and Licensing) Regulations, 1951. (S.I. 1951 No. 1381.)

**Safeguarding of Industries** (Exemption) (No. 8) Order, 1951. (S.I. 1951 No. 1369.)

**Saint Vincent** (Legislative Council) Order in Council, 1951. (S.I. 1951 No. 1394.)

**Sale of Glebe Land** (Amendment) Rules, 1951. (S.I. 1951 No. 1451.)

**Shops** (Extension of Period of Emergency) Order, 1951. (S.I. 1951 No. 1391.)

**Soap** (Amendment No. 2) Order, 1951. (S.I. 1951 No. 1399.)

**Standard Wedding Rings** (Maximum Prices) Order, 1951. (S.I. 1951 No. 1368.)

**Stopping Up of Highways** (East Suffolk) (No. 2) Order, 1951. (S.I. 1951 No. 1428.)

Stopping Up of Highways (London) (No. 15) Order, 1951. (S.I. 1951 No. 1418.)

Stopping Up of Highways (London) (No. 16) Order, 1951. (S.I. 1951 No. 1419.)

Stopping Up of Highways (Middlesex) (No. 4) Order, 1951. (S.I. 1951 No. 1420.)

**Sweden** (Extradition) (Termination) Order in Council, 1951. (S.I. 1951 No. 1384.)

**Telephone** Amendment (No. 7) Regulations, 1951. (S.I. 1951 No. 1377.)

# REVIEWS

**Manual of Fire Service Law.** By P. PAIN, M.A., of Lincoln's Inn and the South-Eastern Circuit, Barrister-at-Law. 1951. London: The Thames Bank Publishing Co., Ltd. 20s. net.

Fire brigades were formerly maintained on a permissive basis, but fire protection is now imposed as a duty on local authorities. The law on the subject is codified in the Fire Services Act, 1947, and the regulations thereunder. Part I of this book describes the structure and administration of the fire service and explains the position as between the fireman and his employer, e.g., in regard to discipline and pensions. Part II contains a wide survey of fire prevention legislation as applied to factories, dangerous trades, buildings, dangerous substances, merchant ships, theatres and cinemas and coal mines. The second half of the volume consists of an Appendix containing the full text of the Act and regulations. There are numerous industrial brigades, but these are outside the scope of this Act—unless incorporated in an area scheme by special arrangement. The learned author has apparently had practical experience as a fireman and he pays a warm tribute to the good comradeship existing among the fire service personnel. It is an under-statement to describe this book as a manual, as it is well documented and deals with the subject exhaustively. The work will be kept up to date by the issue of supplements, for which a pocket is provided inside the back cover.

**Warmington's Divorce Law.** Second Edition. By L. CRISPIN WARMINGTON, Solicitor, B. PASSINGHAM, O.B.E., Solicitor, E. E. SPICER, M.A., LL.B., Solicitor, and P. B. TOPHAM, Solicitor. 1951. London: Law Notes Lending Library, Ltd. 35s. net.

So far as we are aware this is the first of the divorce text-books to reach a new edition since the spate of matrimonial legislation in 1949 and 1950, and would be very welcome for that reason alone. The editors modestly hope that their work may prove useful to practitioners as an *aide-memoire*, and, whilst we rather suspect that that term has a purely technical meaning and that in the field of diplomacy, we are sure that it will prove most useful.

Among the many practical features of this work is a table of the necessary contents of a divorce petition. This, if utilised, will prevent much waste of time by solicitors and heartburn to counsel, inasmuch as such useless information as the petitioner's place of birth and his early educational experiences and/or places of employment will not be recorded in instructions; neither will such vital information as where and when the marriage took place be omitted.

The section on "The Practice in Divorce," which occupies roughly half the text, contains a wealth of information which it would be difficult to come by elsewhere; particularly useful are the tabular statements of the steps in a divorce proceeding, in chronological order, in both defended and undefended cases. A similar table is given on the time for and method of application for ancillary relief.

In view of the publicity which they have received in recent months as places of asylum for financially unwilling husbands, one would have hoped to have found some guidance on the question of enforcement proceedings in the Channel Islands, and, whilst the extension of facilities for enforcement throughout the United Kingdom by the Maintenance Orders Act, 1950, is, of course, mentioned, the reader's attention is not directed to the fact that the Channel Islands do not form part of the United Kingdom. On p. 224 one could wish for a fuller statement of the decision in *Abrahams (Michael), Sons and Co.* v. *Buckley* [1924] 1 K.B. 903, which is said to be authority for the proposition: "The husband may sometimes be made liable in an action by the wife's solicitors at common law for costs incurred by the wife in divorce proceedings, on the ground that she could pledge his credit for necessaries." The actual findings of the court were that a solicitor can recover costs from the husband where he (the solicitor) has acted reasonably, made adequate inquiries, and shown proper diligence and care—he need not show that the proceedings were necessary or that they had a successful issue.

In view of the fact that most of the legal aid work so far has been in the Divorce Division, one could have hoped that the practice of legal aid in divorce would have been dealt with more fully, but it is always easy to find blemishes when one sets out to look for them! The authors are to be commended on a work of great practical value to the profession.

**Factory Law.** Fifth Edition. By H. SAMUELS, M.A., of the Middle Temple and Northern Circuit, Barrister-at-Law. 1951. London: Stevens & Sons, Ltd. £3 3s. net.

The rearmament programme has given fresh importance to the law relating to factories, and a new edition of this well-known work appears at an opportune time. The Factories Act, 1948, was passed soon after the appearance of the last edition, and various amendments of the consolidating Act of 1937 were thereby effected. The corresponding provisions of the two Acts are explained in the Introduction to the 1948 Act. In spite of the explicit provisions of both Acts, legal problems of interpretation are frequently considered by the courts. For instance, the effect which regulations have in modifying the Acts was illustrated in *Franklin* v. *The Gramophone Co., Ltd.* [1948] 1 K.B. 542. A question may arise whether the decision in that case is avoided by the Blasting (Castings and Other Articles) Special Regulations, 1949, para. 2 (2). For the convenience of readers, the Table of Cases gives references to all the series of reports and a Table of Statutes and Statutory Instruments has been included. This book does not claim to be a statement of the whole of factory law, but it comes as near to achieving that result as is possible in one volume. The previous standard of accuracy and lucidity is maintained in this edition.

**Register of Surveyors, Land Agents, Auctioneers and Estate Agents.** 1951. London: Thomas Skinner & Co. (Publishers), Ltd. 40s. net.

In this one volume has been collected authoritative and essential information regarding the Royal Institution of Chartered Surveyors, the Land Agents' Society, the Chartered Auctioneers' and Estate Agents' Institute and the Incorporated Society of Auctioneers and Landed Property Agents. Besides a combined alphabetical list of the members of these four institutions, the book contains a register by towns and districts of all firms whose partners are members, together with the names of those partners. Much valuable official, municipal, statistical and other information is included, and the whole book is elaborately and helpfully thumb-indexed.

# NOTES AND NEWS

## Miscellaneous

### JUSTICES OF THE PEACE ACT, 1949

Upon the coming into force of s. 10 of the Justices of the Peace Act, 1949, on 1st October, 1951, the following borough courts of quarter sessions will be abolished: Berwick-on-Tweed, Bideford, Bridgnorth, Carmarthen, Chichester, Faversham, Haverfordwest, Hythe, Ludlow, Maldon, Oswestry, Richmond (Yorks), Rye, Saffron Walden, Sandwich, South Molton, Stamford, Sudbury, Tenterden, Tewkesbury, Thetford, Tiverton, Warwick and Wenlock. The court of quarter sessions for the Liberty of Ripon will also be abolished. The following boroughs will lose their separate commissions of the peace, and will become petty sessional divisions of the counties in which they are situated. The clerk to the borough justices will continue as clerk to the justices for the petty sessional division: Aberystwyth, Basingstoke, Berwick-on-Tweed, Beverley, Bewdley, Bideford, Bodmin, Boston, Brecon, Bridgnorth, Bridport, Brighouse, Buckingham, Caernarvon, Cardigan, Carmarthen, Chichester, Clitheroe, Colne, Congleton, Dartmouth, Darwen, Denbigh, Dorchester, Droitwich, Dunstable, Durham, East Retford,, Evesham, Eye, Falmouth, Faversham, Flint, Glossop, Godalming, Great Torrington, Hartlepool, Harwich, Haverfordwest, Helston, Henley-on-Thames, Hertford, Heywood, Hyde, Hythe, Jarrow, Kendal, Launceston, Leominster, Liskeard, Louth, Ludlow, Lydd, Lyme Regis, Lymington, Maidenhead, Maldon, Marlborough, Middleton, Monmouth, Mossley, Neath, Newport (Isle of Wight), New Romney, Osset, Oswestry, Pembroke, Penryn, Pudsey, Richmond (Yorks), Ripon, Romsey, Ryde, Rye, Saffron Walden, St. Ives, Sandwich, South Molton, Southwold, Stalybridge, Stamford, Stratford-on-Avon, Sudbury, Tamworth, Taunton, Tenby, Tenterden, Tewkesbury, Thetford, Tiverton, Totnes, Truro, Wallingford, Warwick, Wells, Welshpool, Wenlock, Wisbech, Wrexham and Yeovil. The two petty sessional divisions of the Liberty of Ripon will each become a petty sessional division of the West Riding of Yorkshire. The clerks to the justices will be unchanged. The special jurisdictions in Romney Marsh and the Liberties of the Cinque Ports will be abolished. Romney Marsh and the Thanet Division of the Liberties of the Cinque Ports will each become a petty sessional division of the county of Kent. The Deal Division of the Liberties of the Cinque Ports will become included in the existing Wingham petty sessional division. There will be separate commissions of the peace for the administrative counties of East and West Suffolk and East and West Sussex in place of the existing commissions for the counties of Suffolk and Sussex. The courts of quarter sessions of the existing two divisions of each of the two counties will be replaced by courts of quarter sessions for the two administrative counties. The existing commission of the peace for the county of Southampton will be replaced by two commissions of the peace for the administrative counties of Hampshire and the Isle of Wight. This will involve the establishment of a court of quarter sessions sitting in the Isle of Wight.

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At The Law Society's Final Examination held on 18th, 19th and 20th June, 1951, 253 candidates out of 423 were successful. The Council have awarded the following prizes: to H. W. Gamon, B.A. Oxon., the Edmund Thomas Child Prize, value £18; and to P. F. Smithson the John Mackrell Prize, value £11.

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### DEVELOPMENT PLANS

#### County of Durham Development Plan

The above development plan was on 1st August, 1951, submitted to the Minister of Local Government and Planning for approval. It relates to land situate within the Administrative County of Durham and includes town maps for Hartlepool Municipal Borough, Houghton-le-Spring and district, and Billingham. A certified copy of the plan including town maps as submitted for approval has been deposited for public inspection at the County Planning Office, 10 Church Street, Durham. Certified copies of the plan (including town maps) have been deposited for public inspection at the offices of the Municipal Borough Council, Hartlepool, the council offices of Houghton-le-Spring U.D.C. and Chester-le-Street R.D.C., and the council offices of Billingham U.D.C. respectively. Certified copies of the plan (excluding town maps) have been deposited for public inspection at the offices of the Municipal Borough Councils at Durham, Stockton-on-Tees and Jarrow, and also at the council offices of each urban and rural district council in the administrative county. The copies of the plan and town maps so deposited are available for inspection free of charge by all persons interested at the places mentioned above, from 9 a.m. to 5 p.m. (Saturdays 9 a.m. to 12 noon, except in the case of Chester-le-Street R.D.C. and Hebburn U.D.C., where the copies will not be available for inspection on Saturdays). Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, 23 Savile Row, London, W.1, before 22nd September, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Durham County Council at the Office of the Clerk of the Council, Shire Hall, Durham, and will then be entitled to receive notice of the eventual approval of the plan.

#### City of Lincoln Development Plan

The above development plan was on 26th July 1951, submitted to the Minister of Local Government and Planning for approval. It relates to land situate within the City and County Borough of Lincoln. A certified copy of the plan as submitted for approval may be inspected free of charge from 10 a.m. to 12 noon and 2 p.m. to 4.30 p.m. (Saturdays 10 a.m. to 12 noon) at the Corporation Offices, Silver Street, Lincoln. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, Whitehall, London, S.W.1, before 15th September, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Lincoln County Borough Council, Corporation Offices, Lincoln, and will then be entitled to receive notice of the eventual approval of the plan.

#### City of Worcester Development Plan

The above development plan was on 30th July, 1951, submitted to the Minister of Local Government and Planning for approval. It relates to land situate within the City of Worcester. A certified copy of the plan as submitted for approval may be inspected free of charge from 10 a.m. to 4 p.m. (Saturdays 10 a.m. to 12 noon) at the Town Planning Department, 1 Hylton Road, Worcester. Any objection or representation with reference to the plan may be sent in writing to the Secretary, Ministry of Local Government and Planning, 32 St. James's Square, London, S.W.1, before 17th September, 1951, and should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the Council of the City of Worcester and will then be entitled to receive notice of the eventual approval of the plan.

#### Montgomeryshire Development Plan

Notice has been given that the certified copies or extracts of the development plan relating to the urban and rural districts of Machynlleth have been deposited at the Plas, Machynlleth, and not at the Owain Glyndwr Institute, Machynlleth, as previously notified.

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## Wills and Bequests

Mr. J. T. Roberts, solicitor, of Criccieth, clerk to the Caernarvonshire County Bench, left £72,625 (£72,282 net).

# OBITUARY

### MR. A. FEETHAM

Mr. Arthur Feetham, solicitor, of Darlington, died recently. He was admitted in 1903 and was a member of the council of the Durham and North Yorkshire Law Society. He was a magistrate on the County Bench for about 28 years, and was elected chairman in January, 1948.

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